

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:) WT Docket No.: 96-41
)
)
LIBERTY CABLE CO., INC.,) File Nos.:
for Private Operational) 70877 WNTT370
Fixed Microwave Service) 708778, 713296 WNTM210
Authorization and) 708779 WNTM385
Modifications) 708780 WNTT555
) 708781, 709426, 711937 WNTM212
New york, New York) 709332 (New)
) 712203 WNTW782
) 712218 WNTY584
) 712219 WNTY605
) 713295 WNTX889
) 713300 (New)
) 717325 (New)

Volume: 8
Pages: 731 through 1003
Place: Washington, D.C.
Date: January 14, 1997

James A. Bradshaw
JAN 16 1997

FOO-0113 F01

HERITAGE REPORTING CORPORATION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Courtroom 2
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
January 14, 1997

The parties met, pursuant to notice of the Judge
at 10:02 a.m.

BEFORE: HON. RICHARD L. SIPPEL
Administrative Law Judge

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FEDERAL COMMUNICATIONS COMMISSION

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Behrooz Nourain		735 857 889 922	979	992	

E X H I B I T S

<u>TW/CV:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
35	816	817	
36	817	818	

Hearing Began: 9:16 a.m.	Hearing Ended: 5:39 p.m.
Recess Began: 12:33 p.m.	Recess Ended: 1:45 p.m.

P R O C E E D I N G S

9:16 a.m.

JUDGE SIPPEL: Mr. Nourain, would you come take the stand, sir.

Whereupon,

BEHROOZ NOURAIN

having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

JUDGE SIPPEL: Okay. We're back in session.

Mr. -- anybody -- is there any preliminary -- are there any preliminary matters or any matters?

MR. SPITZER: Just to tell you, Your Honor, I gave counsel a copy of the typed version of the numbers I had read into the record about the final document production. If Your Honor wishes a copy, I'll be happy to hand you one.

JUDGE SIPPEL: I don't think it's necessary for me to have one, but thank you. The record will reflect -- I'm sure if there's anything -- anything seemingly amiss, that Mr. Keam or someone will let us know.

MR. SPITZER: Indeed, Your Honor.

JUDGE SIPPEL: Mr. Beckner, Mr. Holt's not here. Is --

MR. BECKNER: As far as I know, he's planning to come.

JUDGE SIPPEL: Okay.

1 MR. BECKNER: I mean, I don't know that he's not
2 coming.

3 JUDGE SIPPEL: It's not a situation that he's not
4 coming. It's just that he's not here yet.

5 MR. BECKNER: I think that's correct, Your Honor,
6 yes.

7 JUDGE SIPPEL: Well, let's proceed. It's 9:20.
8 We're ready to go. Let's go.

9 FURTHER CROSS EXAMINATION

10 BY MR. BECKNER:

11 Q Mr. Nourain, yesterday you described in some
12 detail the process that's involved with adding a new path to
13 an existing transmitter. And what I wanted to ask you was a
14 couple more questions in that area. First, do you post a
15 copy of the FCC license for the transmitter somewhere near
16 where the transmitter is located?

17 A Yes.

18 Q Okay. Is it near enough to the transmitter to
19 where if a technician going up to the transmitter to turn it
20 on or to make any adjustments to it would see the license in
21 that same room or area?

22 A Not necessarily because some of those transmitters
23 are on top of the roof.

24 Q Okay.

25 A And there is no other environment to put the piece

1 of paper there --

2 Q Okay.

3 A -- and have it sit there for a number of years.

4 Q In the cases where the transmitter is on top of
5 the roof, where is the license kept for that transmitter?

6 A We have -- for those cases, we have three types of
7 transmitters that have that case. A couple of them, there
8 is a cabinet below the roof on some mechanical room which we
9 will use for housing the power supply units. So we will
10 post that inside that cabinet. And on a couple of
11 occasions, it's not a cabinet. It's just an open power
12 supply. We probably just staple it against the wall next to
13 that, the cabinet.

14 That -- but -- and those are the only two cases;
15 that other is in a room against the wall or inside the
16 cabinet. Under no circumstances, any licenses are obviously
17 outside next to the transmitter which is in open air. There
18 is no other closed environment. And in addition to that,
19 I'll have all the original licenses kept in my office.
20 Those are the copies that we make out of the original to
21 post --

22 Q Okay.

23 A -- to post in case it got lost. Just --
24 incidently, just -- I have to -- actually, just for the
25 record, is that those are the areas that are not enclosed or

1 access. Just the building has an access to all that
2 mechanical room area if somebody goes in there at some point
3 and looks at it. They have an access to it. It's just not
4 something that's been locked and I have the key.

5 Q I see.

6 A And but for the original transmitter, the main
7 transmitter which I talked to Your Honor yesterday about,
8 Normandie Court, which is our main transmitter, the head
9 end, we keep that inside of our head end room which there is
10 a cabinet, like a glass type cabinet. And we have licenses
11 there where our head end equipment is, inside which is two
12 floors below the outdoor transmitter which they are, again,
13 outside.

14 Q Let me ask you about the transmitter at Waterside
15 Plaza.

16 A Yes, sir.

17 Q Okay. You have a transmitter at Waterside Plaza,
18 is that correct?

19 A We have a repeater -- a regenerative repeater
20 which would be looked as a transmitter since it's a -- it's
21 a -- it has it's own call sign and license, yes.

22 Q Okay. Now, that transmitter, is it one of those
23 ones that's outside up on the roof?

24 A That's correct. All of the transmitters are
25 outside.

1 Q Okay. And do you happen to know where the license
2 for that transmitter is posted?

3 A It should be under the roof. There is the
4 mechanical room which has a power supply on the wall. And
5 then next to it should -- that licenses generally goes. But
6 in addition to that, we always -- at some point if the
7 building requires to have the copy of the license, we'll
8 submit that to them, too. I don't know what happens at that
9 particular site. But it happened at another site before.

10 Q Now, in the 30 Waterside Plaza, you said the
11 license is next to the power supply. Is that the power
12 supply for the transmitter?

13 A That is the power supply -- there's one power
14 supply -- it depends on the buildings. Generally, you could
15 have a building which is a smaller building. You will have
16 one power supply which serves the internal distribution, as
17 well as the transmitter which is what we call line powering
18 the transmitter. Those -- that particular case has a power
19 supply there. And that I know definitely powers the
20 transmitter and also powers the distribution system
21 internally.

22 Q So if someone going in to turn the power on to the
23 transmitter in 30 Waterside, in that building to turn the
24 power on to get to the transmitter would go in the room
25 where the power supply is and where the license is posted.

1 Is that right?

2 A Not necessarily. As long as you get the power
3 coming into the 500 cable into the transmitter, you don't
4 really need to go down there to turn on the power supply.
5 Just -- there is one thing that I have to probably points
6 out on these licenses, Your Honor. Since the transmitter is
7 licensed to serve the path, that transmitter is always on.
8 For every path you turn on, you do not go there and turn the
9 transmitter on. The transmitter is on.

10 So, therefore, if there's a license there, the
11 transmitter is on, you go and do all your construction on
12 the receiver and so on and so forth when you get those two
13 dishes aligned together and then you turn it off. That's
14 when you say you're turning it off. The terminology using
15 about just turning the transmitter off and not on this
16 application is not just a switch that you turn it off.
17 That's all I'm trying to emphasize.

18 Q Now, 30 Waterside was in fact a new transmitter
19 that wasn't licensed as of the end of February of 1995,
20 isn't that correct?

21 A That is correct.

22 Q So that anyone going into the room where the power
23 supply that feeds power to that transmitter would not see
24 any kind of a license on the wall for that transmitter as of
25 the end of February 1995.

1 A Oh, of course. There wasn't any licenses there,
2 sir.

3 Q Okay.

4 A But I want to ask something Your Honor.

5 JUDGE SIPPEL: Well, you've already answered his
6 question.

7 MR. BECKNER: Yes, there's no question pending.

8 THE WITNESS: Okay.

9 BY MR. BECKNER:

10 Q Now, I want to ask you about another document
11 which we assume you had received. If you turn to TW/CV
12 Exhibit 34, please. That's in the large notebook.

13 A Exhibit 24?

14 Q 34.

15 A 34?

16 Q 34, it's the last one.

17 A Yes.

18 Q Okay. Do you recall receiving this exhibit -- a
19 copy of this Exhibit 34 from Mr. Lehmkuhl?

20 A Yes.

21 Q Okay. He -- let me just show you the last page of
22 this exhibit. There's a little print-out that's called a
23 transmit confirmation report which appears to be generated
24 by the fax machine. And there's a number, (212) 735-5678.
25 Do you recognize that telephone number?

1 A 350-2701?

2 Q No, no, no.

3 A I'm sorry.

4 Q It says receiver, (212) 735-5678.

5 A Could you just go over the page that you're
6 talking about, sir?

7 Q Yes, that's page 005. It's the last page.

8 A Yes, I see that page. Now, what was the question?

9 Q The question is is that the telephone number
10 that's beside the word, "receiver" --

11 A Yes.

12 Q -- is a New York area code. Do you recognize that
13 telephone number?

14 A What -- what number is that?

15 Q 735-5678, area (212).

16 A I'm sorry, yes. That's -- that's a fax machine in
17 where my office is.

18 Q Okay. So that's your fax machine, your office fax
19 machine.

20 A That's correct.

21 Q Okay. Now, can you tell us what led you to --
22 well, let's just ask another question. The memorandum
23 begins by saying, "You have asked me to prepare a summary of
24 the status of Liberty's pending 18 gigahertz applications."

25 A Yes.

1 Q Is this statement correct?

2 A That's correct.

3 Q Did you in fact ask Mr. Lehmkuhl to prepare this
4 summary?

5 A That's correct.

6 Q Okay. Can you tell us what led you to make this
7 request?

8 JUDGE SIPPEL: I'm sorry. Let me just put this in
9 context. I mean, I know you've identified the exhibit
10 number. But this memo is dated April 28th, 1995. I just
11 want to state that for the record so that this is what your
12 testimony related to at that time frame. Okay. I'm sorry.
13 Go ahead.

14 MR. BECKNER: Okay.

15 THE WITNESS: What was the question?

16 BY MR. BECKNER:

17 Q Do you remember the question?

18 A No, could you repeat it again?

19 Q Okay. The first sentence of the memorandum says,
20 "You have asked me to prepare a summary of the status of
21 Liberty's pending 18 gigahertz applications."

22 A That's correct.

23 Q Is -- is that a correct statement as far as you
24 know? Did you ask Mr. Lehmkuhl to prepare this?

25 A Yes, I did.

1 Q Okay. And can you tell us what led you to ask Mr.
2 Lehmkuhl to prepare this summary?

3 A That's a result of the conversation, phone
4 conversation I had with him prior to that date, a couple of
5 days, two days, three days before that.

6 Q Okay. Can you tell us about this phone
7 conversation that you had a couple of days before April
8 28th?

9 A Just around that time, I had some -- some
10 documents came to my attention that I don't recall exactly
11 because I didn't have the actual content of that document.
12 I don't remember. But a document was -- I found out from
13 that document that there is some kind of a petition or some
14 kind of a -- I will say petition for the sake of making my
15 argument -- my statement. I don't exactly know the words.
16 But for somehow, that Time Warner had stopped activation of
17 some of our paths that we -- we activated.

18 And that prompted me to -- that's the first time
19 to find out that some of those paths that we activated were
20 unauthorized because of that -- that statement that came to
21 be. And what I did, I first investigated myself based on my
22 information which would be those technical information to
23 find out what those paths were. And at that point, I talked
24 to Mr. Lehmkuhl, called him on the phone to talk to him
25 about it.

1 Q Did you see -- do you see a copy of this paper
2 that you say Time Warner filed, this petition?

3 A Well, I said I thought it was Time Warner. Yes, I
4 saw the -- some lists of some sites were coming up. I don't
5 remember if there was any cover sheet. But I remember that
6 there was some kind of a -- some information was faxed to me
7 internally which had -- had some kind of information. And
8 I'm sure at that point, that was -- as part of the
9 information, some of these paths were unauthorized and Time
10 Warner was objecting to that. So -- but I don't recall what
11 type of document was that. I should say who came that
12 document from, whose address.

13 Q You say you got this list that was faxed to you.
14 You don't know who faxed it to you?

15 A It was -- it was faxed -- I think it was faxed
16 internally. I don't know who faxed it to me. It was -- I
17 know for sure it wasn't from Pepper & Corazzini.

18 Q It wasn't from Pepper & Corazzini.

19 A Yes.

20 Q When you say faxed internally, you mean -- meaning
21 from the executive offices on Madison Avenue perhaps?

22 A I don't recall at the moment. But it could be
23 because sometimes I will get information on whether -- if I
24 would not get it directly, I will get it from -- from those
25 offices because others except me will also get some of those

1 copies -- some of those -- some of those documents, as well.

2 Q Would this conversation have taken place on April
3 26th, two days before the date of this memorandum?

4 A I don't exactly recall what date, honestly. But
5 it was -- I wouldn't say that it was -- I would say within
6 the same week, within the next two or three days of that
7 April 28 because things at that point -- now I clearly
8 remember that because that part of it is the one that I
9 first found out there were unauthorized paths. And my
10 discussion, conversation with Mr. Lehmkuhl would not be more
11 than a couple of hours after I found out and I did my
12 investigation.

13 But when he wrote that letter to me, I don't
14 know -- since I don't know exactly that particular day, it
15 could have been a day or two days before that letter. It's
16 not going to be beyond that. So I don't know exactly when
17 he wrote me that letter.

18 Q Well, did you discuss this problem with Edward
19 Milstein?

20 A After I found out, as I said, I investigated;
21 talked with Pepper & Corazzini, Mike Lehmkuhl. And my
22 question to him was that why isn't there any STAs for some
23 of these buildings that I had the list of them. And then
24 after that -- after my phone conversation with him, I talked
25 with Tony Ontiveros. And he arranged us to meet with Peter

1 Price and Edward Milstein in our headquarters -- I mean in
2 our corporate which was --

3 Q And is that where -- is that -- in that
4 conversation, is that where you told Mr. Price and Edward
5 Milstein what you had found out?

6 A Yes, what I found out that -- my mission was to
7 let them know why this thing -- what buildings were they and
8 why that happened.

9 Q Well, when you had the conversation with Edward
10 Milstein and Peter Price, did it appear to you that they
11 already knew that there was some kind of a problem or that
12 there might be some kind of a problem with unlicensed
13 microwave paths?

14 A No. My recollection is they were as surprised as
15 I was.

16 Q Okay. So -- so you were the one who told them for
17 the first time that Liberty was operating without --
18 operating some license -- unlicensed microwave paths as far
19 as you know?

20 A For -- at that particular subject you mean?

21 Q Yes.

22 A I -- what I told them was why was the reason that
23 these paths were not -- were not unauthorized because after
24 my discussion with Mike Lehmkuhl, I found out about the
25 petition on all paths by Time Warner, and also the emission

1 designator problem that occurred created a delay of the
2 original path that I cleared on September and was filed
3 later on; and that those lists was also as part of that list
4 that I had in my conversation with Mike Lehmkuhl.

5 Q Okay. I think I understand you. What you're
6 saying is is that in this conversation, you explained to Mr.
7 Price and Mr. Edward Milstein why or how this had happened.
8 But was there a conversation before that where you told them
9 that in fact something had happened; that is, that paths had
10 been turned on without licenses?

11 A Well, I think at the time they asked us to go
12 downtown, I presume after my discussion with Mr. Ontiveros.
13 He would have briefed them because when I got to them and
14 talked to them, it wasn't that they -- they did not exactly
15 know at that time. But --

16 Q I see.

17 A -- but it's just a conversation that I had with my
18 supervisor. And because the reason I say that I did not
19 just routinely go see Mr. Edward Milstein or Mr. Price, it's
20 not something I just say I want to come and talk to you;
21 they come down there and talk to them. I talked to Mr.
22 Ontiveros and I told him we have to go downtown. And I'm
23 sure that -- well, you'll have to ask him -- he made an
24 arrangement that we're coming. And logically, there is a
25 conversation on that.

1 But all I can tell you that, when I went down
2 there, the surprise was still there. And more of the
3 explanation was the one that they needed and why that thing
4 occurred as far as a number of these paths. And I discussed
5 -- I discussed the technical aspect of it and went through
6 it the same way I've done in this Court, emission
7 designators and so on and all the ones that I talked
8 yesterday.

9 Q Now, I want you just to go back to this
10 memorandum. That's Time Warner/Cablevision Exhibit 34
11 that's before you.

12 JUDGE SIPPEL: You have it.

13 THE WITNESS: Not Time Warner. You mean Pepper &
14 Corazzini.

15 BY MR. BECKNER:

16 Q Well, we have given this the name of Time
17 Warner/Cablevision Exhibit 34.

18 A Oh, I'm sorry.

19 Q Okay.

20 A I was looking at -- yes.

21 Q It's the memorandum from Lehmkuhl dated April 28th
22 addressed to you and Peter Price.

23 A That's right.

24 Q There is a list that's attached to the memorandum
25 that lists a bunch of pending applications and identifies a

1 couple of them as granted. Did -- did you do anything with
2 this list after you received it?

3 A Could you be a little more specific with that?

4 Q Sure. Did you -- did you take this list of
5 pending applications which has addresses, and did you
6 compare it to the most recent installation progress report
7 for example to see whether or not you had activated any of
8 the addresses that are identified here as the subject of
9 pending applications?

10 A As I just mentioned a few minutes ago, I knew
11 about all of this after I found out about some of the
12 unauthorized paths which was that list that was sent to me
13 which prompted me to talk to Mr. Lehmkuhl. When I got this
14 list, all of this was verbally discussed with Mr. Lehmkuhl.
15 And I asked him to send that. This is as a result of my
16 conversation with him.

17 It is -- at that point, let's for the sake of
18 argument say April, two days, three days before this letter,
19 I mentioned I did all my technical investigation. And at
20 that point, I knew which path is activated because I
21 activated them, and I knew obviously based on that which one
22 was not authorized because that was the -- I should have
23 something to be able to discuss that with him.

24 Q Okay. So -- so you already knew what paths you
25 were operating without licenses. And this -- this

1 memorandum that Mr. Lehmkuhl sent you on the 28th was simply
2 a confirmation that what you knew was correct?

3 A That's correct.

4 Q Okay.

5 A Confirmation and have, you know, everything
6 tabulated. We all know where we are.

7 Q Okay.

8 A All this discussion came into that.

9 JUDGE SIPPEL: I just want to ask one
10 clarification question. This list which is attached to Mr.
11 Lehmkuhl's memorandum, it's a two -- what I have anyway in
12 my set is two pages. Is that a complete list? Take a look
13 at it.

14 THE WITNESS: Your Honor, this is the complete
15 list minus what occurred with another four buildings which I
16 found that out at a later date.

17 JUDGE SIPPEL: All right. Now, who was -- how was
18 this list -- to your knowledge, how was this list prepared?
19 It says at the top of it, "Liberty Cable Co. Pending
20 Application Status." There's no identification as to the --
21 as to the law firm. Where was the -- how was that data all
22 generated? Do you know?

23 THE WITNESS: Yes. It was -- I don't have -- the
24 copy that I had, the copy that was sent to my office, all
25 this was faxed by Pepper & Corazzini. And they had their

1 law firm's fax numbers which come in. I guess this thing,
2 the way I see it now, that's at Constantine & Partners.

3 JUDGE SIPPEL: Well, that's their fax
4 identification --

5 THE WITNESS: Exactly.

6 JUDGE SIPPEL: -- up at the top. And I don't want
7 to get distracted by that. My question is this list appears
8 to be something that -- appears to me anyway that could be
9 something that would just be punched up from a computer
10 information and compiled out of a computer program as
11 opposed to being individually typed up.

12 THE WITNESS: I agree with you. That was the one
13 that --

14 JUDGE SIPPEL: All right. Then my question is is
15 whose database is that coming from?

16 THE WITNESS: This came from -- the first time I
17 saw it, these two cover letters came from Pepper & Corazzini
18 to me on April 28th.

19 JUDGE SIPPEL: All right. So Pepper & Corazzini
20 as far as you know would have all that information to the
21 point that they could put that -- they could -- they could
22 generate this document through their computer system.

23 THE WITNESS: Yes, sir.

24 JUDGE SIPPEL: Now, I don't mean typing it on a
25 PC. I mean, that's -- that is right in their computer.

1 THE WITNESS: Oh, I -- yes, I think that's what
2 happened after I discussed that with him. I asked him to
3 give me a complete information of where are we with
4 applications, filings and STAs and licenses. And that's
5 what -- this came from them, yes. That's true.

6 JUDGE SIPPEL: Okay. Now, how long did it take
7 him to get that to you?

8 THE WITNESS: I -- I would say that it must have
9 been within a couple of days after that.

10 JUDGE SIPPEL: It took that long?

11 THE WITNESS: It took that long because I have
12 discussed that with Mr. -- the time that we went down and
13 talked to Mr. Ed Milstein. And after that, I had some
14 explanation for Mr. Edward Milstein about some of the paths.
15 And I had a letter that -- that was April 26th. So and then
16 this came two days after that. So based on that, I think it
17 took about a couple of days before this thing comes in.

18 JUDGE SIPPEL: Had you or Mr. Ontiveros or either
19 of the Mr. Milsteins or Mr. Price ever asked Mr. Lehmkuhl
20 for any other -- for information similar to this at an
21 earlier time?

22 THE WITNESS: I don't -- I don't know. I don't
23 recall if I did.

24 JUDGE SIPPEL: If you say that you don't recall,
25 then it's possible that you did or that one of these

1 individuals did.

2 THE WITNESS: I can't answer that. I don't know.
3 I don't know if Mr. Lehmkuhl to talk to any of these guys
4 before this.

5 JUDGE SIPPEL: All right. How about yourself?
6 How about yourself?

7 THE WITNESS: I know that I was -- all I can say
8 is that I was -- I never got any of this -- any of this
9 information from Mr. Lehmkuhl before my discussion with him
10 on the phone two days -- two days before that.

11 JUDGE SIPPEL: No. My question is you had never
12 asked Mr. Lehmkuhl for information -- this type of
13 information prior to this April of 1995 situation?

14 THE WITNESS: No. No, sir.

15 JUDGE SIPPEL: All right.

16 BY MR. BECKNER:

17 Q Yes, Mr. Nourain, I just want to just tell you
18 that the copy of the exhibit you're looking at was faxed to
19 my office by the Constantine firm. So if you look at the
20 top of each page, you'll see a print-out from the fax
21 machine. And it's dated 1/6/97. So I want you to ignore
22 those because they're not -- that little line of information
23 is not part of the exhibit.

24 A I understand, yes.

25 Q Okay. I just wanted to be sure that you

1 understood where that came from.

2 JUDGE SIPPEL: Let me ask one more question.

3 THE WITNESS: Yes, sir.

4 JUDGE SIPPEL: Could you without -- independently
5 of Mr. Lehmkuhl, could you from the database that you have
6 in your computer system, could you have generated this
7 information?

8 THE WITNESS: No, I don't have any computer to
9 have a database on it to do that.

10 JUDGE SIPPEL: Well, does anybody at Liberty have
11 it? I mean, if you wanted to get this information
12 internally, could you -- internally in Liberty, could you do
13 that in April of '95?

14 THE WITNESS: I could have done the transmitters
15 and the name of the path and -- no, I could not have done,
16 for example, Your Honor, the status of the application
17 because Mike Lehmkuhl had that in his possession.

18 JUDGE SIPPEL: All right. Well, how about the
19 date filed, could you have that -- would you have that
20 information?

21 THE WITNESS: No, he would have that.

22 JUDGE SIPPEL: You wouldn't even have that?

23 THE WITNESS: I would have a copy of it at some
24 point, yes.

25 JUDGE SIPPEL: But you didn't have it recorded in